IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.985 of 2002

Reserved on 25.4.2007

Date of decision 22.5.2007

Tita Ram Petitioner

Vs.

Union of India Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Chandranarayana Singh, Advocate.

For the Respondent : Ms.Shilpa Sood, Central Govt. counsel.

Rajiv Sharma,J.

By way of this petition the petitioner is seeking the following reliefs:

i) That the respondent may be directed to consider the case of the petitioner on the basis of facts and circumstances mentioned in the writ petition.

ii) That the Hon'ble Court while exercising the powers of judicial review may direct the respondent to examine and consider the entire material on record while framing or modifying the policy/scheme for the grant of pension to the Freedom Fighters to suit the object and purpose of the Scheme.

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[1] Whether reporter of local papers are allowed to see the judgment ? No

iii) That the extended policy of 1981 i.e. Swatantrta Sainik Samaan Pension Scheme be declared arbitrary and unreasonable as it is discriminatory in nature or in the alternative the Hon'ble Court may order the respondent to modify the policy/scheme by including the Ex-Military Personnel in its eligibility clause for the grant of pension and consider the entire material on record while modifying the Scheme.

iv) That the respondent may be directed to pay to the petitioner the pension retrospectively from the date on which the petitioner made his first representation alongwith interest.

v) That the records of the case may be called for.

vi) Cost of the petition may be awarded in favour of the petitioner and against the respondent.

vii) Any other relief, order, directions, which this Hon'ble Court deems just and proper, be also granted in favour of the petitioner in the interest of justice.

The brief facts necessary for the adjudication of this petition are that the petitioner was recruited in the Indian Army on September 23,1940 in 13th Battalion and was discharged on November 24, 1949. He was again enrolled in the Army in the rank of Havaldar on December 21,1949. The petitioner claiming himself to be a freedom fighter approached the Central Government for grant of Freedom Fighter Pension under the Swatantrata Sainik Samaan Pension Scheme, 1972 and Swatantrata Sainik Samaan Pension Scheme, 1980. He made a representation to the State of Himachal Pradesh, who in turn recommended his case to the Central Government. The Central Government did not take any action on

the representation made by the petitioner and he approached this Court by way of CWP No.222 of 2001, which was decided on July 31,2001. This Court had directed the respondent to decide the question of eligibility of the petitioner as expeditiously as possible preferably within four months and convey the same to the petitioner. In sequel to the directions issued by this Court on July 31,2001 the Ministry of Home Affairs has reiterated its earlier decision conveyed to the petitioner on April 20,1995 and did not find him eligible for Swatantrata Sainik Saman Pension. Copy of the decision is placed on record and marked as Annexure P-6 dated September 18,2001.

I have heard the parties and perused the record.

Mr. Chandranarayana Singh, learned counsel for the petitioner, had submitted that the petitioner was eligible under para 4(a) of the Swatantrata Sainik Saman Pension Scheme, 1972 as well as of 1980 Scheme. Mr.Singh further elaborated his submission to stress that his client is an Ex-Indian National Army personnel and was eligible for pension. Ms.Shilpa Sood, learned Central Government Counsel had supported the decision dated September 18,2001.

The petitioner has not placed on record any material to substantiate his plea that he was a Member of the Indian National Army. The averments made by the petitioner are vague and do not support his contention that he ever was a Member of the Indian National Army. The averments are that he proceeded overseas from May 1941 and was reported missing with effect from June 6,1942 and was recovered from the enemy on June 25,1944. He again proceeded overseas on January 16,1945 and returned to India on December 5,1945.

The only case set out by the petitioner is that he participated in the activities of INA while in prison. In his discharge certificate it is not stated that the petitioner was ever an Indian National Army Personnel. The cause

of discharge has been shown as “Reduction of Indian Army on Demobilization”. The petitioner’s case was rejected for grant of Swatantrata Sainik Samaan Pension on April 20,1995. He had also filed CWP No.1168 of 1992 in the Delhi High Court, which was dismissed in default by the Hon’ble High Court. In sequel to the directions issued by this Court in CWP No.222 of 2001 the respondent has passed speaking orders dated September 18,2001. The record of such personnel of British Indian Army who had participated in the Indian National Army, indicate so in the discharge certificate. In the record produced by the petitioner it is not mentioned that the petitioner had ever participated in the Indian National Army activity, to the contrary it shows that the petitioner had participated in “World War-II being a regular combatant of British Indian Army and he got colours and an Africa Star Medal”.

The upshot of the above discussion is that the petitioner was not an Indian National Army personnel and thus not entitled to Swatantrata Sainik Saman Pension. Accordingly the writ petition is dismissed with no order as to costs.

May 22, 2007(g) **(Rajiv Sharma), J.**